

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

BRETT N. COE,

Plaintiff,

v.

Case No. 2:16cv365

**IHOP RESTAURANTS, LLC,¹
a foreign limited
liability company,
and
CFRA, LLC,
a foreign limited
liability company,**

Defendants.

ORDER

This matter comes before the court on defendant, CFRA, LLC's, Motion to Dismiss (ECF No. 10) filed on August 19, 2016. The matter was referred to a United States Magistrate Judge by Order of September 13, 2016, (ECF No. 14), pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b), to conduct hearings, including evidentiary hearings, if necessary, and to submit to the undersigned proposed findings of fact, if applicable, and recommendations for the disposition of the matter.

The United States Magistrate Judge's Report and Recommendation (ECF No. 16) was filed on December 22, 2016. The Magistrate Judge recommended that the court grant defendant's Motion to Dismiss, but


¹ Plaintiff voluntarily dismissed IHOP Restaurants, LLC, on August 19, 2016. (ECF No. 9).

that the dismissal be without prejudice as to Claims 1, 2, and 5 of plaintiff's Complaint.

By copy of the Report and Recommendation of the Magistrate Judge, the parties were advised of their right to file written objections thereto. The court has received no objections to the Magistrate Judge's Report and Recommendation, and the time for filing same has expired. The court does hereby adopt and approve in full the findings and recommendations set forth in the Report and Recommendation of the United States Magistrate Judge filed December 22, 2016. Accordingly, defendant's Motion to Dismiss is **GRANTED**; plaintiff's Complaint is **DISMISSED** as to Count 3, and plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE** as to Counts 1, 2, and 5.² Plaintiff is **GRANTED** leave to amend Counts 1 and 5 of his Complaint.³ Said Amended Complaint shall be filed within twenty (20) days of entry of this Order.

The Clerk shall forward a copy of this Order to all parties of record.

It is so **ORDERED**.

 *is/*

Rebecca Beach Smith
Chief Judge

January 13, 2017

² Plaintiff withdrew Count 4. (ECF No. 12).

³ Counts 1 and 2 are not separate claims and should be asserted in an Amended Complaint as one claim, alleging two alternate bases of how plaintiff is a qualified individual with a disability.